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August 13, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA ELECTRONIC FILING

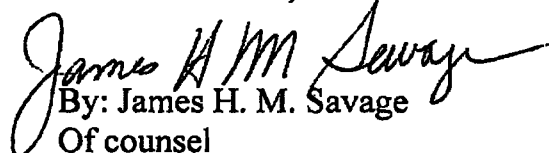
Re: STB Finance Docket No. 35141
U S Rail Corporation – Construction and Operation Exemption –
Brookhaven Rail Terminal

Dear Ms. Brown,

Petitioner U S Rail Corporation hereby submits the accompanying Motion for Expedited Consideration of its Exemption Petition in the within proceeding, together with the Verified Statement of Gerard T. Drumm in support thereof, and a Certification of Service.

We thank the Board for its time and consideration.

Very truly yours,
John D. Heffner, PLLC


By: James H. M. Savage
Of counsel

cc: Mark D. Cuthbertson (via electronic mail)
Robert Ryback (via First Class mail)

227643

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35141

**U S RAIL CORPORATION
-- CONSTRUCTION AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL**

MOTION FOR EXPEDITED CONSIDERATION

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Counsel for Petitioner U S
Rail Corporation

Dated: August 13, 2010

CONCLUSION

For the above stated reasons and based upon the above cited authorities, Petitioner U S Rail respectfully requests the Board issue its decision within 30 days of August 10, 2010 and further requests that the decision provide that the exemption shall take effect within 10 days of the Service Date.

Respectfully submitted,
JOHN D. HEFFNER, PLLC

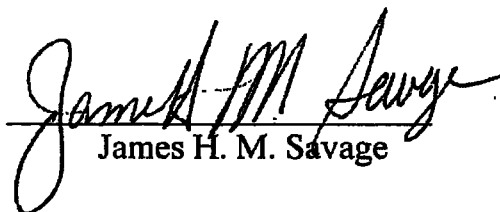

By: James H. M. Savage
Of Counsel

Attorneys for Petitioner
U S RAIL CORPORATION

Dated: August 13, 2010

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.


James H. M. Savage

Dated: August 13, 2010

VERIFIED STATEMENT OF GERARD T. DRUMM

I, Gerard T. Drumm, of full age, state the following, under penalty of perjury:

1. I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills"). I am responsible for financial and legal matters with respect to Sills and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

2. I submit this verified statement in support of the August 13, 2010 motion of U S Rail Corporation ("U S Rail") for expedited consideration of its petition for an exemption to construct and operate the Brookhaven Rail Terminal ("BRT").

3. Sills has significant and ongoing debt service obligations, professional fees and tax burdens. These burdens have been met for nearly two years without any offsetting revenues from operations at the BRT. Given the current state of the economy, Sills' internal resources to continue meeting those burdens have been stretched to the limit and beyond. Sills plans to utilize proceeds from sales of excavated construction materials to fund those burdens and to partially fund

construction costs. Those excavated materials are used primarily in seasonally based construction projects. As we move deeper into the construction season (April through October), the window of opportunity for entering into sales agreements for these materials begins to narrow and all but closes after September 1st. While the value of these assets decreases, Sills' financial obligations remain constant.

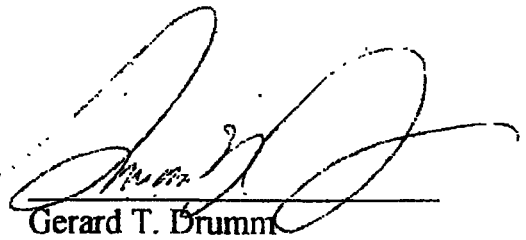
4. Furthermore, Sills' construction line of credit with New York Commercial Bank has gone unused for two years and, as a result, is under continuing regulatory review. Although Sills has negotiated a temporary extension of the line to September 30, 2010, Sills may nevertheless lose the line if an effective license to construct is not in place prior to the end of September. Replacing Sills existing line of credit in the current banking climate may prove difficult or even impossible.

5. In support of U S Rail's petition and request and on behalf of Sills, I respectfully request the Board grant this request for expedited consideration, and issue a decision on the merits of the exemption petition within 30 days of August 10, 2010, and further provide that the exemption take effect within 10 days of the Service Date.

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 13, 2010.



Gerard T. Drumm

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35141

**U S RAIL CORPORATION
- CONSTRUCTION AND OPERATION -
BROOKHAVEN RAIL TERMINAL**

MOTION FOR EXPEDITED CONSIDERATION

INTRODUCTION

Petitioner, U S Rail Corporation ("U S Rail"), an existing Class III common carrier by rail, respectfully submits this motion seeking expedited consideration within 30 days of August 10, 2010, the environmental comment closure date, of U S Rail's unopposed exemption petition filed August 8, 2008, with the Decision providing the exemption take effect within 10 days of the Service Date. There is an urgent and immediate need for an expedited decision, as the annual construction season is rapidly drawing to a close, and the specter of enduring another winter

without any project revenues threatens to impose extraordinary financial hardships upon Petitioner and Petitioner's affiliates.

In light of the foregoing, U S Rail respectfully requests that its petition for an exemption from the requirements of 49 U.S.C. 10901 be granted upon the terms set forth herein.

BACKGROUND

On August 8, 2008, U S Rail petitioned the Board for authority to construct and operate the Brookhaven Rail Terminal ("BRT") in Suffolk County, Long Island, New York. Sills Road Realty, LLC ("Sills") owns the BRT site. U S Rail has entered into a Lease Agreement with Sills to operate the BRT.

The Town of Brookhaven initially opposed the project. See, Town of Brookhaven's September 18, 2008 Reply to Exemption Petition. In late March 2010 the parties reached a settlement agreement, and the Town has advised the Board that it now supports the project. See, Town of Brookhaven's March 30, 2010 Letter of Support filed April 5, 2010. The terms of the settlement agreement have been reduced to writing and have been submitted to and have become part of the Board's record in this proceeding. No other person or party filed opposition to this project. U S Rail's exemption petition thus stands unopposed.

The proceeding, which had been held in abeyance at the Parties' request, was restored to the Board's active docket by Decision served June 9, 2010. The Board's environmental review process, which had not been held in abeyance, culminated in the Section of Environmental Analysis ("SEA") issuing an Environmental Assessment ("EA") July 26, 2010 with an accompanying Notice providing for a 15 day comment period ending August 10, 2010. No comments were received by the August 10th filing deadline and the time period for submitting same has expired.

ARGUMENT

POINT I

Under the Circumstances Present Herein, an Expedited Decision would be Appropriate

The Board's Rules of Practice provide that a party seeking relief not provided for in any other rule may petition for such relief. 49 C.F.R. 1117.1. Under this Rule, parties to various proceedings have sought expedited consideration upon demonstrating good cause. See, Paducah & Louisville Railway, Inc., Motion for Expedited Consideration, STB Finance Docket No. 33362, Paducah & Louisville Railway, Inc.—Control Exemption—Paducah & Illinois Railroad Company (Served Aug. 25, 1997). In deciding the merits of this motion for expedited consideration, the Board should consider that its Rules of Practice state the rules

will be construed liberally to secure *just, speedy and inexpensive* determination of the issues presented (emphasis supplied). 49 C.F.R. 1100.3. Petitioner submits that its application satisfies all of the foregoing criteria.

With regard to the above-stated criteria, petitioner must affirmatively demonstrate that the exemption petition meets the requirements of 49 U.S.C. 10502. Those requirements are (a) whether the sought-after exemption satisfies the Rail Transportation Analysis requirement, and (b) whether the sought-after exemption satisfies the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321-43. See, STB Finance Docket No. 34836 *Arizona Eastern Railway, Inc.—Construction Exemption—In Graham County, AZ* (Served June 15, 2009). If petitioner has met both requirements the Board "will issue the exemption". 49 C.F.R. 1121.4(b). U S Rail presented its case-in-chief in its initial submission, as required by 49 C.F.R. 1121.3(a), and as supplemented periodically throughout this proceeding, most recently by U S Rail's May 25, 2010 motion to supplement the record to include an updated BRT site plan. While recognizing the Board's ultimate discretion with regard to the time frame for issuing its decision, U S Rail believes that its submissions meet the requirements detailed above, and that, accordingly, a Board-issued decision within 30 days of the August 10, 2010 deadline for submitting comments would be appropriate and just.

Petitioner now sets before the Board several additional factors supporting its motion for expedited consideration. These factors involve the adverse impact upon the Petitioner and its affiliates from the BRT site remaining dormant since 2007.

In a May 7, 2010 submission in this proceeding, U S Rail and Sills jointly made certain representations to the Board in support of their request for expedited consideration of an earlier motion to vacate the Board's October 12, 2007 cease and desist order in a related proceeding. FN1. Petitioner reiterates those representations as supplemented herein.

Petitioner and Sills have significant and ongoing debt service obligations, professional fees and tax burdens. These burdens have been met for nearly two years without any offsetting revenues from operations at the BRT. Given the current state of the economy, Petitioner and Sills' internal resources to continue meeting those burdens have been stretched to the limit and beyond. Petitioner and Sills plan to utilize proceeds from sales of excavated construction materials to fund those burdens and to partially fund construction costs. Those excavated materials are used primarily in seasonally based construction projects. As we move deeper into the construction season (April through October), the window of opportunity

FN1 The May 7, 2010 request for expedited consideration was filed in this proceeding in conjunction with a related proceeding to which Sills was a party, STB Finance Docket No. 35036, Suffolk & Southern Rail Road LLC-Lease and Operation Exemption-Sills Road Realty, LLC.

for entering into sales agreements for these materials begins to narrow and all but closes after September 1st. While the value of these assets decreases, petitioners' financial obligations remain constant. See, August 13, 2010 Verified Statement of Gerard Drumm (Drumm V.S.) at Paragraph 3, annexed hereto as Exhibit A.

Furthermore, Sills' construction line of credit with New York Commercial Bank has gone unused for two years and, as a result, is under continuing regulatory review. Although Sills has negotiated a temporary extension of the line to September 30, 2010, Sills may nevertheless lose the line if an effective license to construct is not in place prior to the end of September. Replacing Sills' existing line of credit in the current banking climate may prove difficult or even impossible. See, Drumm V.S. at Paragraph 4.

The Obama administration has consistently indicated its support for timely implementation of privately funded shovel ready construction projects that provide jobs and stimulate the economy. The BRT is such a project, and should, for the reasons set forth above, be accorded expedited consideration for approval.

Accordingly, Petitioner U S Rail requests that the Board issue a decision approving the exemption within 30 days of August 10, 2010.

POINT II

The Exemption Should Take Effect within 10 Days Of the Service Date

The Board's decision will indicate when the exemption takes effect. Section 49 CFR 1121.4(e) provides, "Unless otherwise specified in the decision, an exemption *generally* will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions for reconsideration must be filed within 20 days of the service date." Under subsection (f), petitions to revoke may be filed at any time. For good cause, the Board could specify a shorter than 30 day period before the effective date.

The Board could, if it so chose, make the exemption effective immediately. Theoretically, an immediate effective date, while of optimum benefit to the Petitioner, could work a hardship upon a party seeking to stay the project pending appeal. 49 CFR 1115.5. The 10 day waiting period presumably balances the hardship between the Petitioner, who must forego beginning construction, and this theoretical opponent seeking to prevent the Petitioner from commencing operations, who must diligently file the stay petition during the 10 day window.

On the other hand, having the exemption take effect after 10 days would presumably not prejudice a party seeking reconsideration, as a mere petition for

reconsideration does not automatically stay the Board's prior decision. 49 CFR 1115.3(f). In any case, a party seeking reconsideration may also file a stay petition within the original 10 day time window after the decision, placing them on even footing with all other theoretical opponents.

For the reasons set forth in Point I above, the requested 20 day differential between the presumptive and requested effective dates is likely to prove critical in getting the project substantially underway during the current construction season and, as importantly, in preserving the project's access to construction funding.

Accordingly, Petitioner U S Rail respectfully requests the Board's decision in this proceeding provide that the exemption shall take effect within 10 days of the Service Date.